State Management Of Fisheries

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A University of North Carolina
Sea Grant College Publication
UNC-SG-77-15
September, 1977

Price: $1.50
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Raleigh, N. C. 27607

STATE MANAGEMENT OF FISHERIES: THE TWIN IMPACTS OF EXTENDED FEDERAL JURISDICTION AND DOUGLAS V. SEACOAST PRODUCTS, INC.,

By

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This work was sponsored by the Office of Sea Coast Grant, NOAA, U.S. Dept. of Commerce, under Grant No.04-3-158-40 and the North Carolina Dept. of Administration.

SEA GRANT PUBLICATION UNC-SG-77-15 Sept., 1977

SUMMARY

This study of the impact of new federal fishery law on state marine fishery law, with special emphasis on North Carolina, draws the following principal conclusions:

1. Extraterritorial state jurisdiction has been largely eliminated under the Fishery Conservation and Management Act of 1976.

2. States will be increasingly compelled to adopt fishery management rules that are satisfactory to federal authorities even with regard to their own territorial waters.

3. Under recent decisions of the United States Supreme Court, laws presently in effect in North Carolina and other states which discriminate against non-residents appear to be unconstitutional.

4. North Carolina should require sports and recreational fishermen to obtain licenses to use marine fisheries resources.

5. In order to ameliorate the present conflict between sports and commercial fishermen, North Carolina should consider raising the fees now required to obtain a commercial fishing license. This would have the effect of eliminating the economically-inefficient, occasional user of commercial fisheries resources.

6. North Carolina should undertake to modernize its marine fisheries laws in order to correlate them with new federal law. Among needed changes is a legal framework for better data collection regarding stocks and catch, economic and sociological research, and improved advisory and other services rendered to the state's commercial fishermen.

Two recent events portend revolutionary changes in the management of marine fisheries in the United States. The first was the passage of the Fishery Conservation and Management Act of 1976, (FCMA).[1] By this act, Congress established a 197-mile wide exclusive fisheries conservation zone contiguous to the three mile territorial sea of the United States. Eight Regional Fisheries Management Councils are established with the task of preparing and implementing fisheries management plans for all fisheries within their geographical area of authority. The impetus for this act, which has been widely noted and discussed,[2] was to place some control over foreign fishing vessels off our shores and to thereby benefit the domestic fishing industry. Another aim was to promote the conservation of fisheries resources and to restore those stocks which have been badly depleted by over-exploitation.[3] An impact of the FCMA which has been largely overlooked, however, is the effect on fisheries regulation by the individual states, which up to now have enjoyed relative autonomy in developing their own management principles.

The second important development, which carries major implications for state fisheries management, is the Supreme Court's decision in Douglas v. Seacoast Products, Inc.[4] In that case the court held that two Virginia statutes which discriminated against non-residents and aliens were preempted by the federal statutes governing the enrollment and

licensing of fishing vessels. In effect, a state will not be allowed to deny a federally licensed ship the right to fish except through reasonable conservation measures that are equally applicable to all who use the resource.

The purpose of this article is to explore the implications of these two developments and their impact on state management of marine fisheries. The legal basis for state regulation will first be dealt with, followed by an analysis of the FCMA as an overlay on these traditional legal principles. Then, in order to provide a concrete setting for analysis, the present law of a typical coastal state, North Carolina, will be described, and conclusions will be offered as to specific impacts and changes that are likely to come about in state law as a result of the new era in fisheries management.

I. THE LEGAL AND CONSTITUTIONAL FRAMEWORK FOR STATE CONTROL OF MARINE FISHERIES

A. The Legal Basis of State Control

One of the perennial problems of the law of fisheries management has been to determine the precise source of state jurisdiction and control. Early decisions of the United States Supreme Court contained language indicating that states exercise control based on their title or ownership interest in fishes and wildlife.[5/] In subsequent cases, however, the Supreme Court repudiated the state ownership doctrine, stating in Missouri v. Holland,[6/] that state claim of title rests upon a "slender reed" and finally, in the 1948 decision in Toomer v. Witsell,[7/] calling the ownership theory "a fiction expressive in legal shorthand of the importance to its people that State have power to preserve and regulate the exploitation of an important resource."[8/]

The state ownership of fisheries doctrine again surfaced,

however, with the passage of the Submerged Lands Act[9] in 1953. This act grants to coastal states "title to and ownership of... natural resources" in lands beneath navigable waters and within such waters, including the "right and power to manage, administer, lease, develop, and use the said land and natural resources..."[10] Natural resources are defined in the act to include fish and other marine animal and plant life.[11] This language of statutory grant was interpreted in certain quarters to grant the states ownership of marine resources within their territorial waters.[12]

The Supreme Court in Douglas expressly rejected this argument and reiterated the view stated in Toomer that the ownership doctrine is only a legal fiction. The Submerged Lands Act interest given to the states was interpreted not as a grant of ownership of living marine resources but as a power of administration and control. Thus the authority of the states over fish and other marine resources is merely to manage the resource, exercising "its police power in conformity with the federal laws and constitution."[13]

Douglas accordingly broadly confirms the right of states to apply "reasonable, non-discriminatory conservation and environmental protection measures "[14] to coastal fishing within their territory, which generally extends to offshore waters three nautical miles from the "coastline."[15]

B. Extraterritorial State Jurisdiction

Under some circumstances , however, traditional state regulation of marine fisheries has been permitted to extend beyond the limits of territorial jurisdiction. Two judicially developed theories were

established prior to Douglas to validate such extraterritorial management. The first line of decisions involves regulation in the form of what are known collectively as state "landing laws." Under this category of regulation, states commonly exercise control over fish caught outside the three mile limit that are brought within their territorial waters. In the leading case of Bayside Fish Co. v. Gentry,[16] the Supreme Court upheld a California law regulating the processing of sardines as a valid exercise of the police power although it applied to fish caught outside as well as within three miles. This holding was based upon the ground that the purpose of the regulation was to prevent depletion of the local supply of fish, and it was necessary to exercise jurisdiction over fish brought into the state to prevent evasion of the local policy.[17] The argument that the regulation constituted an improper burden on interstate commerce was rejected, the court stating that any impact on commerce was incidental and beyond the purposes of the legislation.[18] By the same token, states are allowed to prohibit possession of fish taken outside the state[19] and to require a permit for any fishing vessel operating in state waters even if the catch came from operations wholly outside the state.[20]

The second basis for state extraterritorial control is derived from the right of a state to control the conduct of its citizens on the high seas. This was the rationale used by the Supreme Court in Skiriotes v. Florida[21], which affirmed the conviction of a Florida resident who had used gear prohibited under Florida law for the purpose of harvesting sponges outside the territorial limits of the state. The state regulation was held to be a valid exercise of the police power by the state upon one of its citizens, permissible in the absence of any conflict with federal law.[22]

Recently, a series of cases arising in Alaska have explored a possible new basis for state extraterritorial jurisdiction. The controversy arose as a result of regulations controlling crab fishing promulgated by the Alaska Board of Fish and Game. The regulations were made applicable to a region denominated the Bering Sea Shellfish Area, which was defined to extend hundreds of miles west of Alaska's shoreline. They provided for the closing of the crab fishing area each year once 23,000,000 pounds of crab had been taken. It was made unlawful to possess, buy or sell such crab "taken in any waters seaward of that officially designated as the territorial seas of Alaska."[23/] In Hjelle v. Brooks,[24/] crab fishermen from the State of Washington obtained a preliminary injunction against the enforcement of these regulations on the ground that they constituted an unconstitutional burden on interstate commerce. The court distinguished Bayside and the landing law cases, pointing out that the Alaska crab regulations purport to directly regulate extraterritorial conduct without any showing that their purpose was to facilitate enforcement of conservation of the crab fishery within state waters.[25/]

After the Hjelle decision, the offending regulations were repealed and a set of emergency measures were issued. These established a series of crab fishing closures for designated "statistical areas", each of which consisted of (1) a "registration" area of waters within state jurisdiction and (2) an adjacent seaward "biological influence zone." In State v. Bundrant,[26/] the Alaska Supreme Court was called upon to review the convictions of several crab fishermen charged with violating the new regulations. There were two categories of defendants: (1) those charged with possession within the three mile limit of crabs taken on the high areas, (2) those charged with illegal activities within closed areas from 16 to 60 miles from the Alaska coast. Only one of the crab fishermen was a resident of Alaska.

In holding both categories of defendants to be properly charged and subject to state regulation, the Alaska Supreme Court repudiated the analysis of the Hjelle court and departed from the well-established limits of state power to exercise extraterritorial jurisdiction. The court declined to read the landing law cases restrictively to require the showing of problem of enforcement within state territorial waters as the basis for state jurisdiction; instead, the test is whether extraterritorial control is necessary on ecological grounds for the conservation of a fisheries resources that exists partially within state waters. Applying this doctrine, the court found that crabs are migratory creatures, moving beyond the state's territorial boundaries at various times during the year. Since the regulation of activity on the high seas is necessary to protect the maximum sustainable yield within its waters, it is within the state's authority under the police power.27/

The court in Bundrant also extended the Skiriotes concept of the power of a state to regulate the conduct of its citizens on the high seas. Citing precedents from domestic and international law, this principle was broadened to a general concept of "objective territorial" jurisdiction --- that a state can control the activities of non-citizens outside its jurisdiction if they produce detrimental effects on the fishery within state waters. The impact of this concept is that it would allow direct state enforcement against non-citizens on the high seas.28/

Although Bundrant held this unilateral assertion of jurisdiction by a state over fisheries resources of the high seas was not preempted by any paramount federal law, it would seem that this result would not survive the passage, subsequent to the decision, of the FCMA, which declares exclusive fisheries management authority for the United States within

the 197 mile fishery conservation zone[29], and prohibits a state from directly or indirectly regulating fishing outside its boundaries with the exception of state-registered vessels.[30] Moreover, the analysis employed in Bundrant seems to be highly questionable. The principle of Skiriotes, which based the assertion of extraterritorial jurisdiction, by analogy, on the "nationality" principle of international law, which allows states to assert jurisdiction over citizens, is turned on its head and transformed into "objective territorial" jurisdiction, which focuses on the effect within the state of activities outside its territory. Even the application of the objective territorial principle seems spurious since the court did not discuss whether the effect within the state was both direct and substantial, as required by section 18 of the Restatement (second), Foreign Relations law of the United States, which the court relied upon as authority.[31]

A more difficult question is whether Congress intended through the FCMA to preempt even the well established bases of state extra-territorial jurisdiction. By its literal terms, the act appears to abolish both landing law and state citizen jurisdiction except for vessels registered under state law, since the saving clause for state jurisdiction relates only to its exercise within state boundaries and prohibits direct or indirect regulation beyond.[32] The legislative history of the FCMA is curiously silent on this problem, although a colloquy between Senators Stevens and Gravel appears to confirm a legislative intent to restrict the exercise of state control.[33] In any case, it would seem that the implementation of the FCMA will make state extra-territorial control much less important since the act contemplates unified management plans promulgated by both states and Regional Councils for those species of fish that are found both within and without the three mile limit, and regulations pertaining to the fishery are to be coordinated

at the Council level.[34] Landing laws as enforcement devices would not generally be needed since enforcement under the FCMA would be carried out by federal authorities using the facilities and personnel of the states on an as-needed basis.[35] Similarly, the reason for state citizen extra-territorial jurisdiction would seem to have disappeared with the coming of national fisheries management.

C. Limits on State Jurisdiction

Even within the three mile limit, state control over marine fisheries is limited by the Constitution and applicable federal law. In Toomer v. Witsell,[36] the Supreme Court dealt with the constitutional limitations, holding that a South Carolina statute which discriminated against non-residents by requiring them to pay a $2500 license fee while residents were allowed to pay $25, was a violation of privileges and immunities clause of the Constitution. Interpreting the right of non-residents of a state to engage in the business of fishing within a state on the basis of substantial equality with citizens of that state as one of the privileges guaranteed by the clause, the court stated that a disparity of treatment of non-residents may be justified only where there is a substantial reason for the discriminatory treatment beyond the mere fact that they are citizens of another state and, if such reason exists, the degree of discrimination must bear a close relation to it.[37] The arguments that the discriminatory fees were necessary for conservation and for costs of enforcement were rejected by the court as without factual basis in the record.

The Toomer court also struck down a South Carolina statute which required all owners of shrimp boats fishing within the state's territorial waters to unload their catch at a South Carolina port. This law was held to constitute a direct burden on interstate commerce with the object of diverting business to South Carolina that might go to other states. This contravened the commerce clause of the Constitution and could not be applied even to facilitate the collection of a valid tax on shrimp.[38]

The equal protection clause of the Fourteenth Amendment has also been the basis of declaring state discrimination unconstitutional. In Takahaski v. Fish and Game Commission,[39] the Supreme Court held that a California statute barring the issuance of commercial fishing licenses to "persons ineligible for citizenship" was directed at resident alien Japanese and was an impermissible classification. The concept of equal protection protects the right of resident aliens to work for a living on the basis of equality with citizens.

In the recent Douglas decision, the Supreme Court announced yet another theory to combat state discrimination. In invalidating two Virginia statutes which restricted the issuance of commercial fishing licenses to United States citizens and prohibited non-residents from catching menhaden in the Virginia portion of Chesapeake Bay, the court chose to rely on a preemption analysis instead of a constitutional ground. The challenge to Virginia laws was brought by Seacoast Products, Inc., a Delaware corporation qualified to do business in Virginia, which was owned by a British corporation almost entirely owned by alien stockholders. Seacoast Products' fishing vessels were enrolled and licensed United States flag ships under the Federal Enrollment and Licensing Act, which permits a corporation having alien stockholders to register or enroll ships if it is organized under domestic law, if its president and chairman of its board are American citizens and if no more of its directors than a minority of the number necessary to constitute a quorum are noncitizens.[40]

Relying on the famous case of Gibbons v. Ogden,[41] the Supreme Court held that enrollment and licensing of a vessel under federal law implies an authority to carry on the activity for which it is licensed. Since Seacoast Products' vessels had been licensed for fishing, they had been granted the right to fish in Virginia waters on the same basis as

Virginia residents. Thus the discriminatory Virginia laws must fall under the Supremacy clause of the Constitution since they are in direct conflict with federal law.[42/] Enrolled or licensed fishing vessels can therefore only be subjected to conservation and other restrictions under state law as are equally applicable to state residents.[43/]

It appears regrettable that the Supreme Court, in invalidating the two Virginia statutes, did not simply use established constitutional grounds as a weapon against the discrimination involved. In holding for the first time, without any basis other than a weak analogy from an 1824 case,[44/] that the Enrollment and Licensing Act confers a federal right to fish, the court seems to have unleashed a new concept that will have a life of its own beyond the court's purpose of ending state law discrimination. This new federal "fishing license" would appear to potentially conflict with the FCMA, which was intended by Congress to provide comprehensive regulation of United States fisheries. For example, under the authority of the FCMA, a fisheries management plan prepared by a Regional Council may require a permit of any fishing vessel wishing to fish within the fishery conservation zone and, under certain conditions, may establish a limited entry system for using the fishery.[45/] Similarly, states may decide to limit entry to fisheries located within their waters for conservation purposes. It is not clear how such systems can be reconciled with the federal right to fish for all documented vessels under the Enrollment and Licensing Act.

At the same time, the court's decision in Douglas is subject to criticism because it does not invalidate discrimination against all non-residents, but only those with documented vessels. Certain categories of vessels, most importantly those of less than 5 net tons, are exempt[46/]

and not subject to documentation. Thus, at least under the Douglas theory, states would be able to continue to deny fishing to owners of smaller vessels.

II. THE FISHERY CONSERVATION AND MANAGEMENT ACT OF 1976

The avowed purpose of the FCMA is to establish comprehensive management and conservation of the fisheries resources found off the coasts of the United States. This broad aim is implemented through the declaration of a federal fishery conservation zone contiguous to and extending out 197 nautical miles from the geographical limit of state territorial waters.[47/] All fishery resources found within this zone, with the exception of highly migratory species of tuna, are subject to the exclusive management of the United States; moreover this management authority extends beyond the zone where necessary to comprehensively manage continental shelf and anadromous fishery resources.[48/]

The authority to manage the fishery conservation zone is granted to eight Regional Fishery Management Councils which are created under the act.[49/] The states are to be represented in the Councils since voting members of each are to include the principal marine fishery management official from each state in the region, the regional director of the National Marine Fisheries Service and from four to twelve persons appointed by the Secretary of Commerce from lists of qualified individuals drawn up by the governors of the states in the region.[50/]

The primary duty of the Councils and the principal management tool under the FCMA is the promulgation of a fisheries management plan for each management unit of the fishery.[51/] Each plan is subject to review by the Secretary of Commerce for approval, disapproval or partial disapproval.[52/] If any Council fails to prepare a plan or does not modify a plan in an appropriate fashion, the Secretary has the power to prepare the plan.[53/]

There are seven national standards under the FCMA that each plan must meet. The most important of these is the first, which is that management efforts should prevent overfishing and achieve optimal yield from each fishery on a continuing basis.[54/] The determination of optimal yield (OY) begins with the biological determination of maximum sustainable yield (MSY), which is the largest average annual catch or yield in terms of weight of fish caught that can be taken continuously from a fishery stock.[55/] The determination of OY is then made taking additional factors into account, such as values of the resource other than harvesting, the importance of the quality of recreational fishing, social and economic factors, the need for fisheries products and the condition of the habitat.[56/] Other national standards require that the plans be based on the best scientific information available, provide for the management of stocks as a unit throughout their range, not discriminate between residents of different states, promote economic efficiency, allow for flexibility of management, and avoid duplication.[57/]

Each management plan will consist of a description of the fishery and the present fishing levels and interests involved, management and conservation measures to be required, informational and data needs, as well as the OY, including a calculation of potential harvest by fishing vessels of the United States and the surplus available for foreign fishing.[58/] Management and conservation measures that may be a part of each plan, required of all who use the fishery, may include principally permit requirements, gear, area, seasonal, size and quantity limits.[59/] A system of limiting access to the fishery may also be promulgated in order to achieve OY.[60/]

Foreign fishing within the conservation zone and for anadromous fish is prohibited unless (1) there is an existing international fishery agreement or a governing international fishery agreement, (2) the foreign nation extends substantially the same fishing privileges to U.S. fishing boats as the U.S. extends to foreign vessels, and (3) the foreign fishing vessel has a valid permit to engage in fishing under the act.[61] The total amount of foreign fishing allowed is that portion of the OY of each fishery not caught by American vessels.[62] The Secretary of State in cooperation with the Secretary of Commerce is to allocate the total amount of foreign fishing among different nations according to traditional fishing patterns, past cooperation and contribution to fishery research and enforcement and any other matters that are appropriate.[63] Applications for foreign fishing are published in The Federal Register and circulated for comment to the Councils and to committees of the House of Representatives and the Senate.[64]

Although the Federal Fisheries Conservation Zone is defined to exclude state territorial waters[65], and the FCMA contains a savings clause allowing the states to continue to exercise jurisdiction within their boundaries[66], it is evident that the federal fishing law created by the FCMA has a potential extraterritorial impact on state authority. This impact would, of course, be upheld under the preemption analysis.[67]

The principal source of potential extraterritorial impact is the injunction, under the third national standard for Councils management plans, that individual stocks of fish should be managed as a unit throughout their range.[68] It is obvious that any stock that is fished both within federal and state zones of authority cannot be adequately

managed if the state concerned enforces substantially different regulations than the Council. Since under the FCMA, the Secretary of Commerce has ultimate power over the type of management plan, the legal mechanism exists for the federal government to conform state management practices to federal standards, at least for fish stocks that range outside the three mile limit. This federal authority can be enforced, if necessary, through the override provision of the FCMA, under which the Secretary, after notice and a hearing, can take over state management authority (except in internal waters) upon a finding that the state is frustrating the carrying out of a Council management plan.[69/]

Furthermore, under recently adopted regulations under the FCMA, the third national standard also requires a consideration of the interrelationship of species and habitat.[70/] Management plans promulgated by the Councils must also address the impact of pollution, wetland and estuarine degradation on stocks of fish throughout their range.[71/] This may provide a mechanism for federal involvement in wetland regulation beyond that authority already exercised by the Corps of Engineers under section 10 of the Rivers and Harbors Act[72/] and the Corps and the Environmental Protection Agency under the Federal Water Pollution Control Act.[73/]

On the other hand, many mechanisms of state involvement were built into the FCMA. States are heavily represented among the Council members themselves, and thus the management plans will undoubtedly reflect state interests. This is confirmed by a specific provision of the FCMA which allows the incorporation of state conservation and management measures into particular plans on a discretionary basis.[74/]

Two other possible state "handles" on Council planning activities are noteworthy. The procedures of the National Environmental Policy Act [75] are fully applicable to the Councils' actions.[76] The standards of this act[77] would appear to require the preparation of an environmental impact statement in connection with the promulgation of most management plans. The impact statement process would allow the states, as well as other interested parties, the opportunity to comment on the plans. In addition, the provisions of the Coastal Zone Management Act of 1972 require a consideration by federal agencies of the consistency of their actions with the coastal zone management programs of the states.[78] Thus Councils will need to coordinate their actions with state agencies involved in coastal planning.[79]

III. AN ANALYSIS OF THE MARINE FISHING LAWS OF A TYPICAL COASTAL STATE: NORTH CAROLINA

In order to highlight the coming changes in state management of marine fisheries as a result of recent developments, it is useful to focus on the laws and regulations of a particular coastal state. North Carolina appears to be a good choice for such an exercise; while it has not been in the forefront of pioneering legislative developments, it has given serious attention to marine fisheries regulation for many years.[80]

A. An Overview of North Carolina Fisheries Law

Marine fishing is an important industry in North Carolina. Commercial landings in 1976 totaled almost $27.4[81] million, and recreational fishing is one of the prime factors in a multi-million dollar coastal tourist industry. Major commercial species in North Carolina

are shrimp, blue crabs, hard clams, oysters, sea scallops, striped bass, flounder, croaker, spot, gray trout and menhaden.[82/]

Authority over the marine and estuarine resources of North Carolina is vested in a Marine Fisheries Commission composed of fifteen members appointed by the Governor.[83/] The Commission is responsible for establishing policy and promulgating rules and regulations. A state agency, the Division of Marine Fisheries, is charged with the administration and enforcement of coastal fisheries laws and regulations.[84/] It is divided into three sections: Law Enforcement, Research and Development and Estuarine Studies. The Commercial and Sports Fisheries Advisory Committee is empowered to serve in an advisory capacity to the Commission and Division.[85/]

Substantively, North Carolina presently manages marine fisheries as a common property resource[86/] with open access to all users. The state has not employed the concept of limited entry, which has been used in a few states for economic and conservation reasons to restrict access to the resource to maximize the return in relation to the fishing effort employed.[87/] The manner of regulation of each of the principal fisheries in the state is to impose gear restrictions, area and seasonal limits, methods of taking, fish size and amount limitations on the fishermen that use the resource. The Marine Fisheries Commission has broad discretion to promulgate appropriate measures.[88/]

Geographically, North Carolina law asserts jurisdiction over a zone 200 miles from the coastline.[89/] This extension of jurisdiction was probably invalid when passed and is surely void now that it has been preempted by the FCMA. As a practical matter, North Carolina has never tried to regulate the area beyond the three mile limit.[90/] North Carolina also enforces several "landing laws" prohibiting the

possession of fish from whatever origin in violation of North Carolina size and season limits.[91/]

Additional regulation of the fishery in North Carolina is through requiring a variety of licenses, permits and leases of certain categories of users of the resource. First, all vessels engaged in commercial fishing, which is defined in terms of using commercial fishing equipment or fishing with the purpose of selling the fish, are required to obtain a commercial fishing license. This license requirement also applies to vessels engaged in commercial fishing outside state waters which have their primary situs in North Carolina.[92/] Licensing is a ministerial function whose primary purpose is to provide data and to generate revenue. Even so, the fees are nominal for residents, ranging from $1.00 for vessels without motors to seventy-five cents a foot for vessels over 26 feet.[93/] Non-residents of North Carolina, however, must pay $200.00 for each vessel licensed, regardless of its length.[94/] This latter provision is intended primarily for South Carolina vessels; in the administration of the law, Virginia residents are denied licenses on the ground that state discriminates against North Carolina fishermen.[95/] It is also noteworthy that recreational and sports fishermen who do not use commercial gear are free from any licensing requirement.

Second, all persons taking oysters or clams in state waters for commercial purposes must obtain a license. The fee for such a license if $1.00, but its issuance is restricted to residents of the state.[96/] Third, persons who market fish commercially, with the exception of commercial fishermen, must obtain a fish dealers' license.[97/] The primary purpose of this license is to facilitate the collection of North Carolina's tax on fish sales and to gather sale statistics. There is apparently widespread evasion of this tax, which currently amounts

to only about $28,000 per year. For this reason, fish sale statistics are notoriously unreliable.[98] A fourth category of license, to land and sell fish, covers any commercial fishermen who, although exempt from the commercial fishing vessel license requirement, lands in the state to sell fish.[99] In addition, various types of gear, such as butterfly nets for the taking of shrimp and hydraulic dredges for hard clams, cannot be used without a permit.[100] Also, the Marine Fisheries Commission may lease to residents of North Carolina public bottoms underlying coastal fishing waters for commercial cultivation of oysters and clams, provided that they do not contain a natural oyster or clam bed. [101] The Commission also administers North Carolina law governing wetlands and requiring a permit for dredging or filling in such areas.[102]

B. The Potential Impact of Federal Fisheries Management on North Carolina Law.

On the canvas of North Carolina fisheries law, it is possible to paint in vivid hues some of the changes that are bound to come to state fisheries management as a result of new federal involvement. It should be emphasized at the outset that the impact on the states should not be totally negative, in the direction of erosion of state power. The new federal program, it will be seen, presents the states with new opportunities which, if taken, should lead to an increased state role and enormous economic and social benefits for fishing and coastal communities.

Considering the parsdigm of North Carolina law, a major change will be that whereas before the FCMA, the Marine Fisheries Commission exercised virtually unlimited discretion in substantive management matters, such as legal sizes and limits, seasons, area and gear restrictions, that freedom of action will be greatly circumscribed under federal fisheries management. Except

for fisheries that are wholly within state waters, the Commission, in promulgating management regulations, will be compelled under the threat of federal override,[103] to follow the lead of the Regional Councils. Since the full-time staff of each Regional Council will be extremely limited,[104] it is expected that the major influence in management policy will be the National Marine Fisheries Service (NMFS) in the Department of Commerce. This agency has better data collection capability and more information about the biology and ecology of fisheries resources than any individual state agency.[105]

State fisheries programs may also be required to change qualitatively, in addition to having to coordinate gear, season and other management restrictions with the Councils. NMFS and federal authorities are likely to encourage the comprehensive management of each fishery. The ultimate in this regard is some form of limited entry program, which restricts access to a fishery through the limited availability of licenses, the establishment of quotas, or charging resource user fees high enough to restrict entry to the most economically efficient operations.[106] Limited entry is very controversial from the political, economic and constitutional points of view,[107] but under the FCMA, the Councils have discretion to adopt such a management program. As pressures on fishing resources increase, the elements of the limited entry management alternative will undoubtedly receive increasing attention.

Even if limited entry is not chosen, a state like North Carolina should be compelled to employ a much more comprehensive system of regulation. A major hole in the state's program is the lack of any license requirement for recreational and sports fishermen.[108] As a result, there is presently little data on numbers of such fishermen or their catch.[109] It also renders impossible any fair system of allocation of the resource between these and other user groups and, as a result, conflicts

between sports and commercial fishermen have been increasing.[110/] Moreover, federal management through the Councils may compel North Carolina to more closely integrate its regulation of marshland and wetland resources[111/] with fisheries management and to establish a more adequate program for attacking the problem of coastal pollution.[112/]

One of the most serious problems of present North Carolina law is discrimination against non-residents. It is astounding that twenty-nine years after the Supreme Court's decision in Toomer,[113/] North Carolina, through a high-fee system or outright denial of the right to fish, maintains the very system of partition of the fishery along state lines that Toomer condemned. Other states similarly administer discriminatory regulations.[114/] This situation is testimony to the ineffectiveness of the various multi-state marine fisheries commissions created by interstate compact to secure the enactment of uniform fisheries laws.[115/]

Under the standards of Supreme Court decisions, the discriminatory practices of North Carolina appear to be unconstitutional. Under Douglas, the state can no longer deny the right to use the fishery to vessels documented under the Enrollment and Licensing Act.[116/] Even as to undocumented vessels, the blanket denial of commercial fishing licenses to Virginians and the high-fee charged South Carolinians would not seem justified by any substantial state interest and would according violate the privileges and immunities clause under the Toomer standard.[117/] The provision of North Carolina law limiting commercial clam and oyster licenses to residents would be valid as to inland waters under McCready,[118/] but this 1876 case may be ripe for overruling by the Supreme Court. Moreover, national standard four under the FCMA[119/] prohibits discrimination between residents of different states, and this would provide additional legal justification to force an end to these practices. Thus under federal standards North Carolina fishermen will shortly

have to share the state's fishery with non-residents, but in return will gain access to other states' resources.

The most important impact of federal fisheries management on the states, however, will be to open new frontiers for their marine fisheries management programs. Under the FCMA, provision is made to restrict foreign fishing within 200 miles to that portion of OY that is surplus, considering the capability of domestic fishermen.[120/] This is an invitation to the states to upgrade their fishermen's ability to utilize the resource. Furthermore, the determination of OY and the other national standards for fishery management plans prepared by the Councils rest upon the application of biological, statistical, economic and sociological knowledge and information.[121/] The effectiveness of states' ability to influence Council decisions will be in direct proportion to their ability to gather and inject such data into the decision-making process.

Most states' programs are deficient in both these regards. North Carolina operates a fishermen's economic development program consisting of advisory services to fishermen,[122/] but it has not been given sufficient priority. A major problem has been, for example, that the state's marketing and fish processing facilities have never accommodated the commercial catch, so that fish caught by the state's fishermen must be shipped elsewhere for processing and distribution.[123/] There is need to increase the existing programs of market analysis and improvement, education in business and financial methods, financial assistance and technical advisory services to improve the capability of the state's fishermen. All states should establish a comprehensive framework for the development of their commercial fishing industry.

Similarly, there is a lack of knowledge on the state level of

biological information on stocks, catch statistics and the sociology of coastal communities. In North Carolina, the National Marine Fisheries Service is the primary source of catch statistics, and these are incomplete to a great degree.[124/] Fish sales are reported only in connection with tax payments and are thus unreliable.[125/] Very little information exists with respect to stocks and their relation to environmental conditions.[126/] Social data is almost nonexistent.[127/] The future effectiveness of state programs will depend to a great degree on the extent to which, in cooperation with federal authorities, these gaps of knowledge can be remedied. New legal authority and financial resources are needed as a framework for a comprehensive attack on these problems.

CONCLUSION

The new Federal Fishery Management Conservation Act and the recent Douglas decision in the United States Supreme Court present the states with both new problems and opportunities regarding their marine fisheries management programs. There is little doubt that these developments on the federal level will compel revolutionary changes in the way states presently manage fisheries. State programs will have to be upgraded, and state authorities' freedom of action will be severely constrained by increased federal involvement. A major effect will be an end to any attempt by states to reserve the fishery exclusively for their own citizens. At the same time, the new fisheries management concepts give the states an unprecedented opportunity to develop their fishing industries. It is time for states to undertake the comprehensive revision of their laws and programs relating to marine fisheries in order to maximize the potential provided by new federal requirements.

FOOTNOTES

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+ This article was prepared under a grant from the Office of Sea Grant, National Oceanic and Atmospheric Administration, United States Department of Commerce and the State of North Carolina, Department of Administration.

1. Fishery Conservation and Management Act of 1976, 16 U.S.C.A. §§1801-1882 (Supp. 1977).

2. E.g. Comment, The Fishery Conservation and Management Act of 1976: Structure and Function of Contiguous Economic Zone, 12 Texas Int'l L.J. 331 (1975); Comment, The Effects of the 200-mile United States Fishing Zone, 37 La. L. Rev. 852 (1977).

3. 16 U.S.C.A. §1801; S. Rep. No. 416, 94th Cong., 1st Sess. 1 (1975), reprinted in Comm. on Commerce, 94th Cong., 1st Sess., A Legislative History of the Fishery Conservation and Management Act of 1976, at 653-725 (1976).

4. ___U.S.___, 97 S.Ct. 1740 (1977).

5. E.g. Martin v. Waddell, 41 U.S.(16 Pet.)367 (1842); Manchester v. Massachusetts, 139 U.S. 240 (1891); Geer v. Connecticut 161 U.S. 519 (1896).

6. 252 U.S. 416 (1920).

7. 334 U.S. 385 (1947).

8. Id. at 402.

9. 43 U.S.C. §1301 et seq. (1953).

10. Id. §1311(a).

11. Id. §1301(e).

12. E.g. See Douglas, 97 S.Ct. at 1751.

13. 97 S.Ct. at 1752. It is interesting to note, however, that Justices

Rehnquist and Powell, although concurring in the judgment, dissented from that part of the court's opinion interpreting the Submerged Lands Act. They agreed that the states do not own marine resources within their territorial limits in the conventional sense, but posited that the states have a "substantial property interest" or "common ownership" right in fish and game within their boundaries. This state right, in their view, predates the Submerged Lands Act, which they deny to be the source of any right or grant to the states over fish. Id. at 1754. It would seem that the purpose of these two justices in expressing this view is to emphasize that it is common law and not the federal grant of authority under the Submerged Lands Act that is the real source of state control over fishing resources and that, since state control exists independent of federal suffrage, states have extremely broad power over fishery resources, which can only be overridden by a clear violation of a constitutional provision or a direct conflict with federal law. Thus there remains a difference of opinion among the members of the Supreme Court as to the precise origin of the doctrine of state control, and the ownership theory may yet surface in some form in the future.

14. Id. at 1748.

15. The "coastline" under the Submerged Lands Act has been held to be identical to the "baseline" under international law. United States v. California 381 U.S. 139 (1965). The three nautical mile limit has been held to be the extent of state jurisdiction for the east coast states bordering on the Atlantic Ocean under the Submerged Lands Act. United States v. Maine, 420 U.S. 515 (1975). The three mile rule similarly applies for other coastal states with the possible exception of the Gulf Coasts of Florida and Texas to which a limit of up to three marine leagues (9 nautical miles) is applicable. United States v. Florida, 420 U.S. 531 (1975); United States v. Louisiana, 382 U.S. 288 (1965).

16. 297 U.S. 422 (1936).

17. Id. at 426.

18. Id. at 426.

19. E.g. See Frach v. Schoettler, 46 Wash, 2d 281, 280 P.2d 1038 (1955); State v. Richardson, 285 A.2d 842 (Me. S.Ct. 1972).

20. E.g. Santa Cruz Oil Corp. v. Milnor, 55 Cal. App. 2d 56, 130 P.2d 256 (1942).

21. 313 U.S. 69 (1941).

22. Other cases applying the Skiriotes rationale include People v. Foretich, (2 Cal. Rptr. 481, 14 Cal. 3d Supp. 6 (Cal. App. 1970) and Felton v. Hodges, 374 F.2d 337 (5th Cir. 1967).

23. 1973 Alaska Commercial Fishing Regulations, 5 AAC 36.040.

24. 377 F.Supp. 430 (D. Alaska 1974), vacated, 424 F.Supp. 595 (D. Alaska 1976). The decision in the second Hjelle case came after the federal plaintiffs voluntarily requested a stay of proceedings in order to allow the disposition of state criminal proceedings and a decision by the Alaska Supreme Court on the federal claims challenging the regulations constitutionality. The consequence of this abstention by stipulation was to prevent relitigation of the merits of the plaintiffs' claims.

25. Id. at 440-441.

26. 546 P.2d 530 (Alaska 1976); rehearing denied, 547 P.2d 838. (Alaska 1976); appeal dismissed mem. sub nom., Uri v. Alaska, ___U.S.___ 97 S.Ct. 40.

27. Id. at 554. The Alaska Supreme Court has also applied this doctrine to uphold extraterritorial regulations of the scallop fishery. State v. Sieminski. 556 P.2d 929 (Alaska S.Ct. 1976).

28. 546 P.2d at 555-556 (1976).

29. 16 U.S.C.A. §§1811-1812 (Supp. 1977).

30. Id. §1856(a).

31. 546 P.2d at 555 n. 105 (Alaska 1976).

32. 16 U.S.C.A. §1856(a) (Supp. 1977).

33. 122 Cong. Rec. 5116-5120 (daily ed. Jan., 19 1976) (Remarks of Sen.'s Gravel and Stevens), reprinted in Comm. on Commerce, 94th. Cong., 1st Sess., A Legislative History of the Fishery Conservation and Management Act of 1976, at 459-468 (1976). One commentator has suggested that Senator Magnuson consciously and deliberately established federal preemption over extraterritorial fisheries in order to advance the interests of Washington's king crab fishermen in the waters off Alaska. C. Curtis, Alaska's Regulation of King Crab on the Outer Continental Shelf, 6 U.C.L.A. Alas. L. Rev. 375, 406-408 (1977).

34. NOAA Guidelines for Regional Fisheries Management Councils, 42 Fed. Reg. 34449, 34459 (to be codified in 50 C.F.R. §602.2(d)(2)) (1977).[hereinafter cited as NOAA Guidelines.]

35. 16 U.S.C.A. §1861 (Supp. 1977).

36. 334 U.S. 385 (1947).

37. Id. at 396-397. The court also rejected the state ownership theory as a justification for state discrimination against non-residents. In doing so, it distinguished the early case of McCready v. Virginia, 94 U.S. 391 (1876), which upheld a Virginia statute prohibiting citizens of other states, but not Virginia citizens, from planting oysters in the tidal waters of the Ware River. The court restricted the application of McCready to inland waters and non-free swimming fish. 334 U.S. at 401. The McCready case has so often been distinguished in subsequent cases that its continuing validity is subject to doubt.

38. 334 U.S. at 404-406 (1947). The court upheld a statute which levied a tax on shrimp, holding it to be a merely local measure and not a burden on interstate commerce. 334 U.S. at 394-395.

39. 334 U.S. 410 (1947).

40. 46 U.S.C. 11 (1970); 46 C.F.R. §67.03-5(a) (1976).

41. 9 Wheat. 1, 6 L.Ed. 23 (1824).

42. Douglas, 97 S.Ct. at 1759 (1977).

43. Id. at 1748. In a companion case, decided on the same day as Douglas, the Supreme Court intimated that the Douglas rationale could be used to invalidate a Massachusetts statute that prohibited non-residents from dragging for fish by beam or otter trawl in Vinyard Sound during July, August and September. Commonwealth of Massachusetts v. Westcott, _____U.S._____, 97 S.Ct. 1755 (1977).

44. The court acknowledged that the Gibbons court's interpretation of the Enrollment and Licensing Act is regarded by most scholars as questionable. 97 S.Ct. at 1748, n. 13. Furthermore, the court's pronouncement of a federal fishing right is an extension of Gibbons, which only involved a right to engage in the "coasting trade."

45. 16 U.S.C.A. §1853(b) (Supp. 1977).

46. 46 C.F.R. §67.01-11 (1976).

47. 16 U.S.C.A. §1811 (Supp. 1977).

48. Id. §§1812-13.

49. Id. §1852.

50. Id. §1852(b)(1).

51. Management unit is defined as "(a)ny species, stock, or group of species or stocks of fish that is geographically or ecologically interrelated or is affected as a group by fishing practices, that is capable of being managed as a unit on a rationale and timely basis." NOAA Guidelines supra note 34 at 34449, 34458 (to be codified 50 C.F.R. §602.2(a)(2)(ii))(1977).

52. 16 U.S.C.A. §1854(a) (Supp.1977).

53. Id. §1854(c).

54. Id. §1851(a)(1).

55. Id. §1802(18). NOAA Guidelines, supra note 34 at 34449, 34458. (to be codified at 50 C.F.R. §602.2(b)(2)).

56. Id.

57. 16 U.S.C.A. §1851(a)(2)-(7) (Supp. 1977).

58. Id. §1853(a).

59. Id. §1853(b).

60. Id. §1853(b)(6).

61. Id. §1821(a)-(c).

62. Id. §1821(d).

63. Id. §1821(e).

64. Id. §1824(b)(4).

65. Id. §1811.

66. Id. §1856(a).

67. Preemption derives in this instance from the commerce clause of the United States Constitution. This was the basis of the holding in Douglas, which broadly upheld the right of the federal government under the commerce clause to regulate the taking of fish in state waters on the ground that this is an activity which Congress could conclude affects interstate commerce. This analysis would carry over to validate the more comprehensive federal program instituted under the FCMA. Conflicting state laws and regulations, therefore, could not stand.

68. 16 U.S.C.A. §1851(a)(3) (Supp. 1977); NOAA Guidelines, supra note 34, at 34458-34459 (to be codified at 50 C.F.R. §602.2(d)).

69. 16 U.S.C.A. §1856(b) (Supp. 1977).

70. NOAA Guidelines, supra note 34, at 34458-34459 (to be codified at 50 C.F.R. §602.2(d)).

71. Id.

72. 33 U.S.C. §403 (1970).

73. 33 U.S.C. §1344 (Supp. 1975).

74. 16 U.S.C.A. §1853(b)(5) (Supp. 1977).

75. 42 U.S.C. §1431 et seq. (1970).

76. NOAA Guidelines, supra note 34 at 34449, 34453 (to be codified at §601.21(G)(5)).

77. The National Environmental Policy Act requires the preparation of an environmental impact statement for any "major federal action significantly affecting the human environment." 42 U.S.C. §4332(2)(C). (1970).

78. 16 U.S.C. §1456(c) (Supp. 1975).

79. NOAA Guidelines, supra note 34 at 34449, 34453 (to be codified at §601.21(G)(3)).

80. See generally, W. Andrews, North Carolina Fishing Law (Sea Grant NCSU, 1975).

81. M. Street, Trends in North Carolina Commercial Fisheries, 12 North Carolina Tar Heel Coast, No.2,3 (August 1977).

82. Id.

83. N.C. Gen. Stat. §143B-287 (1975).

84. N.C. Gen. Stat. §113-181 (1975).

85. N.C. Gen. Stat. §143B-325.1 (Advance Legislative Service, C. 512, Pamphlet No. 9, 1977).

86. By statute, the marine and estuarine resources "belong to the people of the State as a whole." N.C. Gen. Stat.§113-131 (1975).

87. Alaska and Washington have the most comprehensive limited entry systems with California, Ohio and Michigan also regulating entry into their fisheries. In Alaska, a state commission determines the maximum number of entry permits and allocates them among fishermen based on economic dependency and past participation in the fishery. The permits are freely transferable and can be bought by the commission in order to reduce participation to an optimal level. Alaska Stat. §§16.43.010-.380 (1973). Limited entry license provisions are in effect for the herring and salmon fisheries in Washington. To obtain a herring permit, individuals must show proof of prior holding of commercial license and actual capture of herring between 1971-1973. If the number of permits needs to be reduced, the units with the shortest history are eliminated. Entry permits for vessels in the salmon fishery are limited to those vessels previously holding gear and area licenses for salmon and which actually caught salmon in the years 1970-1973. The licenses are

transferable and there are provisions for hardships cases. Wash. Rev. Code Ann. §§75.28.450-.485 (Supp. 1974). Ohio, [Ohio Rev. Code Ann §1533.342 (Supp. 1974)], Michigan [Mich. Stat. Ann. §13.1491(b) (1973)], and California, [14 Cal. Fish and Game Comm'n Reg. §163 (1974)], have statutes that delegate authority to establish a limited entry programs to their fishery departments.

88. N.C. Gen. Stat. §143B-286 (Advance Legislative Service, C. 512, Pamphlet No.9, 1977). State management controls have been described to be inadequate to protect the resource. North Carolina Science Councils North Carolina's Coastal Resources, 6-18 (Dec. 15, 1972).

89. N.C. Gen. Stat. §113-134.1 (1975).

90. Interview with Edward G. McCoy, Director, North Carolina Division of Marine Fisheries, in Morehead City, North Carolina (August 11, 1977).

91. North Carolina Fishing Regulations for Coastal Waters, §.1104 (calico scallops), §.1201 (lobster) (1977).

92. N.C. Gen. Stat. §113-152 (1975).

93. Id. §113-152(c)(1)-(c)(4) (1975).

94. Id. §113-152(c)(5) (Advance Legislative Service, C. 999, 1977).

95. Interview, supra note 90.

96. N.C. Gen. Stat. §113-154(c) (1975).

97. Id. §113-156 (1975).

98. Interview, supra note 90.

99. N.C. Gen. Stat. §113-155 (1975).

100. North Carolina Fishing Regulations, supra note 91, at §§.0202 .0203.

101. N.C. Gen. Stat. §113-202(a) (1975).

102. Id. §§113-229-230 (1975).

103. See text accompanying note 69 supra.

104. NOAA Guidelines, supra note 34, at 34449, 34454. (to be codified 50 C.F.R./ §601.22(c).

105. Interview with Ted Rice, Regional Director, National Marine Fisheries Service, in Morehead City, North Carolina, July 19, 1977.

106. H.G. Knight & J. Lambert, Legal Aspects of Limited Entry for Commercial Marine Fisheries, 3 (National Marine Fisheries Service and Louisiana State University, Negotiated Research Contract No.03-4-042-23, Oct. 15, 1975).

107. For a discussion of the economics and constitutional issues of limited entry management see, Knight and Lambert, supra note 106; Notes Legal Dimensions of Entry Fishery Management, 17 Wm & Mary L. Rev. 757 (1976); R. Groseclose and G. Boone, An Examination of Limited Entry as a Method of Allocating Commercial Fishing Rights, 6 UCLA - Alas. L. Rev. 201 (1977). See also Isakson v. Rickey, 550 P.2d 359 (Alaska 1976), in which the court held that a provision restricting applications for entry permits to fishermen who had gear licenses before a specific cut-off date did not have a fair and substantial relation to the purpose of the Alaska limited entry act. As a means for stopping a rush to buy gear, the cut-off date contradicted the purpose of the limited entry law, which was to allow access to the fishery based on a number of factors, not just past participation. This decision merely overturned the cut-off date; the limited entry management survived. As far as North Carolina is concerned, doubt has been expressed as to the constitutionality of a limited entry system. See, H.G. Knight and T. Jackson, Legal Impediments to the Use of Interstate Agreements in Coordinated Fisheries Management Programs: States in the N.M.F.S. Southeast Region 73 (N.M.F.S. and Louisiana State University, Contract No.03-3-042-28, Sept. 28, 1973). Knight and Jackson rely on the North Carolina Supreme Court's decision in In Re Certificate of Need for Aston Park Hospital, Inc., 282 N.C. 543, 193 S.E.2d 729 (1973), holding that denial of the "need permit" required for construction of a hospital constituted a deprivation of liberty without due process of law

and violated the equal protection clause of the North Carolina Constitution. The court quoted Justice Higgins in Poller v. Allen, 245 N.C. 516, 518, 96 S.E.2d 851,854 (1957): "The right to work and to earn a living is a property right that cannot be taken away except under the police power of the State in the paramount public interest reasons of health, safety, morals, or general welfare." Since there was not a reasonable relation between the denial of the right to work and the promotion of public health, the acts requiring "need permits" were invalidated. But this reasoning probably would not apply to invalidate a limited entry system in North Carolina. If entry permits were made freely transferable, individuals would not be precluded from working, since they would be able to buy into the system.

108. See text accompanying note 92 supra.

109. Interview, supra note 90, and interview, supra note 105.

110. Interview, supra note 90, Another aspect of the conflict between sports and commercial fishermen in North Carolina is that the nominal fees for commercial fishing licenses encourage sportsmen to buy a commercial fishing license and to use commercial fishing gear, even though they may only use the fishery a few times a season. The numbers of such persons is increasing, and their use of the fishery causes conflicts with fishermen who fish commercially as a livelihood. Interview, supra note 90. One way to solve this problem is to increase the fees for commercial fishing licenses so that only the more efficient producers will be able to use commercial gear to exploit the fishery.

111. North Carolina presently regulates dredging and filling in marshlands, wetlands and navigable waters. Supra note 102; in addition, under the

state's coastal zone management program, wetlands and marshlands are "areas of environmental concern" [N.C. Gen. Stat. §113A-113 (1975)], and development within them is subject to a state permit. [N.C. Gen. Stat. §113A-118 (1975)].

112. More than one-third of North Carolina's estuarine and coastal waters are closed to commercial shellfishing because of pollution, and the number of closings is increasing. Interview, supra note 90.

113. See text accompanying notes 36-38 supra.

114. The Supreme Court noted in Douglas that many states have discriminatory fishing laws and cited Maryland, Massachusetts, and New York as examples. 97 S.Ct. at 1752.

115. There are three interstate compacts in the fisheries management field approved of by Congress: Gulf States Marine Fisheries Commission, 63 Stat. 70 (1949), Atlantic States Marine Fisheries Commission, 56 Stat. 267 (1942), as amended, 64 Stat. 467 (1950), and Pacific Marine Fisheries Commission, 61 Stat. 419 (1947). North Carolina has executed and become a member of the Atlantic States Marine Fisheries Commission. N.C. Gen. Stat. §113-252 (1975). The purpose of the compacts is to promote better utilization of the fisheries by development of a joint program for the protection of the fisheries and the prevention of waste. The commissions make recommendations to the member states for coordination of the regulation of the fisheries. The Commissions do not have any direct management authority. The compacts amount only to agreements to consult; they have not been effective in providing a framework for coordination and uniformity among state fishery management programs. H. G. Knight and T. Jackson, supra note 107 at 63. The Supreme Court in Toomer recognized that Atlantic States Marine Fisheries Commission's duties were mainly advisory and that it had little effect in the South Atlantic shrimp fishery. 334 U.S. at 388 n. 5 (1947).

116. See text accompanying notes 42 and 43 supra.

117. See text accompanying note 37 supra.

118. See supra note 37.

119. 16 U.S.C.A. §1851(a)(4) (Supp. 1977).

120. Id. at §§1853(a)(4) and 1821(d).

121. See text accompanying notes 55 and 56 supra, and Office of Technology Assessment, Establishing a 200 mile Fisheries Zone, 88-92 (Library of Congress Card number 77-600021, 1977).

122. N.C. Gen. Stat. §113.-315.18 (Advance Legislative Service, C. 356, Pamphlet No. 7, 1977).

123. North Carolina Marine Science Council, supra note 88, at 6-22 (1972).

124. Interview, supra note 105.

125. Interview, supra note 90.

126. Interview, supra note 90; interview, supra note 105.

127. Interview, supra note 105 and Office of Technology Assessment, supra note 121.